



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,743	10/22/1999	ED VAES	300P4	9958

7590 01/09/2003

MARK A KOCH
866 MAIN STREET EAST
HAMILTON, L8M1L9
CANADA

EXAMINER

GRAHAM, GARY K

ART UNIT	PAPER NUMBER
1744	9

DATE MAILED: 01/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/425,743	VAES, ED
	Examiner	Art Unit
	Gary K Graham	1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 October 2002.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4, 6-19 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4, 6-19 and 25-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 3, 13, 18 and 28 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There does not appear to be original support for the various sections having dimensions in the range $\frac{1}{4}$ " (inches) to 3" (inches). Original disclosure suggests a forefinger thickness range of $\frac{1}{2}$ inch to $1 \frac{1}{2}$ inch (page 8, line 2). Therefore, the range of $\frac{1}{2}$ a forefinger thickness to 3 times a forefinger thickness appears to result in a range of $\frac{1}{4}$ inch to $4 \frac{1}{2}$ inch. Clarification is requested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-19 and 25-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ernest et al '437.

The patent to Ernest discloses the invention as is claimed. While applicant terms his device a “paint” brush, such defines no particular structure not defined by Ernest. The brush of Ernest could be used to apply paint if so desired. Note figure 1A which shows a handle as is claimed, including head section (12), handle section (14) and transition section (16) joining said head and handle sections. Said handle and head sections are at least substantially parallel to one another. Note that Ernest discloses both dimensions and angles within the claimed ranges.

With respect to claim 15, it appears, based on the use of a single material for the entire handle and the dimensions shown in figure 1A, that the brush when rested upon a flat surface will lie such that the bristles remain elevated above such surface.

Response to Arguments

Applicant's arguments filed 23 October 2002 have been fully considered but they are not persuasive.

The thrust of applicant's arguments is that one would not hold the handle of Ernest the same way that applicant discloses his handle is to be held. It is noted however that the manner in which the handle is held is merely the intended use of the device and in no way limits the device.

The handle of Ernest could be held in the manner applicant discloses. Nothing prevents or prohibit such, even Ernest disclosing holding the handle a different way. Applicant is not claiming a method of painting or method of grasping a handle, but merely a brush handle. The hand of a user and its relationship to the handle is not part of the brush handle, nor can it be, in the product brush handle. The handle disclosed by Ernest has every limitation claimed. Note part d) of claim 1 wherein it is claimed, "...handle for gripping...". Such relates to the intended use of the device.

Applicant's argument that combined references must be from analogous sources is not understood. No combination rejection has been made. The rejection by Ernest is under 102(b) and is not a combination rejection. It is put forth that the patent to Ernest fully anticipates the claims by itself.

Applicant's argument that Ernest does not includes a brush edge is not persuasive. The head section of Ernest has each and every feature claimed. Note figure 1B which show the head section having four edges, any one of which can be the brush edge.

Applicant's argument that "One could not possibly grip the handle disclosed in 4,598,437 as we teach in this application" is noted but not persuasive. It appears one could grip the handle of Ernest in just such a manner. What would prevent such? While such may or may not be desirable, such could clearly take place.

Art Unit: 1744

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 703-308-1270. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

Art Unit: 1744

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



←
Gary K. Graham
Primary Examiner
Art Unit 1744

GKG
January 6, 2003